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April 5, 2007

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Cellular early termination fees, WT Dockets 05-193, 05-194
Ex parte communication pursuant to Section 1.1206 of the Rules.

Dear Ms. Dortch:

Yesterday and today, representatives of Wireless Consumers Alliance ("WCA") met with FCC staff to discuss recent developments in the referenced dockets. Carl Hilliard, Scott Bursor, and Jacqueline Mottek spoke from the appended outline with the following:

Wednesday, April 4

Bruce Gottlieb, Office of Commissioner Copps
Marlee Miller, Office of Commissioner Adelstein
Jay Keithley and Lynne Montgomery, Consumer & Governmental Affairs Bureau
Angela Giancarlo, Office of Commissioner McDowell
Matthew Berry and David Horowitz, Office of General Counsel

Thursday, April 5

Aaron Goldberger, Office of Commissioner Tate
Erika Olsen, Office of Chairman Martin

Please direct any questions to the undersigned.

Sincerely,

MILLER & VAN EATON, P.L.L.C.

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James R. Hobson, Counsel to WCA
cc: FCC staff listed above

Wireless Consumers Alliance Presentation Re Early Termination Fees (“ETFs”)
(Docket Nos. 05-193 and 05-194)
April 4 & 5, 2007

I. *NASUCA*

- A. *National Association of State Utility Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006).
- B. Vacated the Commission’s Truth-In-Billing ruling, holding that the Commission “exceeded its authority when it preempted the states from requiring or prohibiting the use of line items.” *Id.* at 1242.
- C. Confirmed that “the courts [and not the FCC] are the final authorities on issues of statutory construction.” *Id.* at 1253.
- D. Adopted definition of “rates charged” that excludes ETFs, and rejected arguments underlying CTIA petition.

II. *PAC BELL*

- A. *Pacific Bell Wireless, LLC v. Public Utilities Commission of the State of California*, 140 Cal.App.4th 718 (2006).
- B. Specifically held that the PUC’s “challenge to the ETF and to Cingular’s policy of permitting no grace period ... is not a preempted regulation of rates or of market entry.” *Id.* at 18.
- C. *Pac Bell* court’s conclusion that Cingular’s ETF is not a “rate charged” is consistent with the nearly unanimous view of state and federal courts that have considered the issue. *See* 9/19/05 and 7/6/06 Ex Parte comments of WCA.

III. VERIZON’S NEW PRO-RATED ETF

- A. Mr. Strigl’s public statements concerning Verizon’s new pro-rated ETF contradict Professor Hausman’s and Dr. Furchtgott-Roth’s testimony.
- B. Calls into question the very purpose of these proceedings. Why should the Commission fundamentally rewrite the balance of state and federal authority just to protect flat-fee ETFs of dubious legality which industry leaders are abandoning?

IV. LIKELY CONSEQUENCES OF COMMISSION PREEMPTING STATE LAW

- A. Courts will view as an act of defiance in light of recent *NASUCA* decision. Certain to be reversed on appeal.
- B. More litigation, not less. The California court, which is required to follow *Pac Bell*, would be required to disregard the Commission's decision. Other courts and arbitration tribunals likely will do the same.